

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|--|------------------------------------|--|
| Investigator: Benjamin Wurtzel | Team: Squad #2 | CCRB Case #: 201606043 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 02/09/2016 2:42 PM | Location of Incident: 1760 Jerome Avenue | Precinct: 46 | 18 Mo. SOL 8/9/2017 | EO SOL 8/9/2017 | |
| Date/Time CV Reported Tue, 02/09/2016 5:30 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 07/13/2016 12:03 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|------------------------------|--------|--------|---------|
| 1. POM Kevin Martin | 24921 | 941068 | 046 PCT |
| 2. POM Christian Spina | 15446 | 952262 | 046 PCT |
| 3. POM Christophe Harrington | 12013 | 950562 | 046 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------|-----------|--------|----------|
| 1. POM Omar Espinal | 03678 | 938442 | 046 PCT |
| 2. POF Ana Ramos | 15692 | 944777 | 046 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------------|---|-----------------------------|
| A.POM Christian Spina | Abuse: Police Officer Christian Spina threatened § 87(2)(b) with the use of force. | |
| B.POM Christian Spina | Force: Police Officer Christian Spina tightly handcuffed § 87(2)(b) | |
| C.POM Christian Spina | Force: Police Officer Christian Spina used physical force against § 87(2)(b) | |
| D.POM Christophe Harrington | Force: Police Officer Christopher Harrington used physical force against § 87(2)(b) | |
| E.POM Kevin Martin | Force: Police Officer Kevin Martin used physical force against § 87(2)(b) | |

Case Summary

On February 9, 2016, Sgt. Kevin Garcia of the 46th Precinct called IAB and filed the following complaint on the behalf of the § 87(2)(b). Due to a mistake by IAB, the complainant was not forwarded to CCRB until July 13, 2016, when it was received via IAB log # 16-24446.

On February 9, 2016, at approximately 2:42 p.m., at the § 87(2)(b) at 1760 Jerome Avenue in the Bronx, § 87(2)(b) struck his coworker, § 87(2)(b) in the leg with an aluminum pipe during an argument. Another co-worker, § 87(2)(b) called 911 in regards. Police Officers Kevin Martin, Christian Spina, and Christopher Harrington of the 46th Precinct responded to the location. Police Officer Martin placed § 87(2)(b) in handcuffs without difficulty and walked him towards the street.

Police Officer Spina told § 87(2)(b) that he could beat him up and allegedly tightened his handcuffs (**Allegations A and B**). While being walked outside, Police Officers Spina, Harrington, and Martin purposefully brought § 87(2)(b) to the ground, allegedly resulting in an abrasion and bleeding from his forehead (**Allegations C, D, and E**). § 87(2)(b) was carried to a waiting police vehicle and taken to § 87(2)(b) Hospital for treatment. § 87(2)(b) was charged with assault in the second degree (Board Review 07).

Video of this incident, attached below, was provided to the investigation by § 87(2)(b) a witness. This video can also be found in IA# 84 (Board Review 08). Additional video, attached below, was obtained of the warehouse interior and can be found in IA# 51 (Board Review 09).



2016-08-18_9-13-32.mp4



2016-10-03_11-43-23.mp4

Mediation, Civil and Criminal Histories

This case was not suitable for mediation due to § 87(2)(b)'s arrest. On September 28, 2016, the Comptroller's Office of the City of New York confirmed that § 87(2)(b) has not filed a Notice of Claim for this incident (Board Review 01). § 87(2)(b) does not have any prior criminal convictions (Board Review 02). The court case resulting from this arrest remains open with the next court date on § 87(2)(b).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- Police Officer Spina has been a member of the NYPD for four years and has no prior CCRB allegations filed against him.
- Police Officer Harrington has been a member of the NYPD for five years and has no prior CCRB allegations filed against him.
- Police Officer Martin has been a member of the NYPD for ten years and has had 101 prior CCRB allegations within 30 complaints and 18 substantiated allegations.
 - In CCRB case number 201101547, Police Officer Martin conducted an improper frisk and search and received no disciplinary action from the NYPD.

- In CCRB case number 201114083, Police Officer conducted an improper stop and received no disciplinary action from the NYPD.
- IN CCRB case number 201205296, Police Officer Martin conducted an improper stop, frisk, search of person, used excessive force, made a discourteous action, and made an improper threat of arrest. The Board recommended charges. The NYPD has yet to impose a penalty.
- In CCRB case number 201600123, Police Officer Martin conducted an improper stop and received Command Discipline B.
- In CCRB case number 201603962, Police Officer Martin conducted an improper stop, question, and strip-search, used excessive force, used offensive language, and spoke discourteously in two separate instances. The Board recommended charges. The NYPD has yet to impose a penalty.
- Police Officer Martin has 16 prior force allegations against him. Three were exonerated, two were substantiated, five were unsubstantiated, one was unfounded, four were closed as uncooperative, and one as unavailable.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) described the officer who threatened him with force and tightened his handcuffs as an approximately 5’10” tall Hispanic male in his mid-30s with a muscular build, short black hair, and a tattoo on one of his arms. § 87(2)(b) a witness, described the officer who threatened § 87(2)(b) with force as an approximately 5’6” tall Hispanic male with short, slicked black hair. Police Officer Spina is a 33-year-old 5’6” tall white male with a tan complexion and short brown hair. Because Police Officers Martin and Harrington were the only other officers present at this point in the incident, and their descriptions do not match the one provided by § 87(2)(b) and § 87(2)(b) with both being at least 6’2” tall with lighter-colored hair and a lighter skin tone than Police Officer Spina, allegations A and B are pleaded against Police Officer Spina.

§ 87(2)(b) alleged that the officer who brought him to the ground was a 6’2” tall, black male in his 40s with an average build. None of the officers who responded to the incident match this description. Additionally, video of the incident, taken shortly after § 87(2)(b) was brought to the ground, does not show any officers matching this description being involved in his apprehension. Because PO Spina, PO Harrington, and PO Martin all stated that they were the officers involved in bringing § 87(2)(b) to the ground, allegations C, D, and E are pleaded against them respectively.

Allegations Not Pleaded

Discourtesy: § 87(2)(b) a witness to the altercation, stated that he heard an officer, identified by the investigation as Police Officer Spina, say “I’m going to fuck you up,” to § 87(2)(b). While the threat of force is similar in nature to that alleged by § 87(2)(b), the discourteous element was not alleged by him nor mentioned by any other civilian witness to this incident. Therefore, an allegation of discourtesy is not pleaded against Police Officer Spina.

Allegation A – Abuse of Authority: Police Officer Christian Spina threatened § 87(2)(b) with the use of force.

§ 87(2)(b) was interviewed by IAB on February 9, 2016 (Board Review 10). § 87(2)(b) provided a telephone statement to the CCRB on July 15, 2016 (Board Review 11), and a verified statement to the CCRB on July 20, 2016. § 87(2)(b) answered additional questions relating to this incident via telephone on August 3, 2016 (Board Review 12). § 87(2)(b) a § 87(2)(b) employee, provided a statement to IAB on February 10, 2016, (Board Review 13) and telephone statements to the CCRB on September 29, 2016, and October 3, 2016, (Board Review 14-15). A manager at § 87(2)(b), § 87(2)(b) provided a telephone statement to the CCRB on August 9, 2016 (Board Review 16). § 87(2)(b) provided a statement to IAB on February 9, 2016 (Board Review 17) and a telephone statement to the CCRB on August 9, 2016 (Board Review 18). § 87(2)(b) a § 87(2)(b) employee, provided a telephone statement to the CCRB on August 10, 2016 (Board Review 19). § 87(2)(b) provided a telephone statement to the CCRB on August 17, 2016 (Board Review 20).

Police Officer Kevin Martin was interviewed at the CCRB on August 25, 2016. Police Officer Spina was interviewed at the CCRB on August 26, 2016. Police Officers Anna Ramos and Omar Espinal were interviewed at the CCRB on August 29, 2016. Police Officer Harrington was interviewed at the CCRB on September 8, 2016.

§ 87(2)(b) alleged that Police Officer Spina said, “I could beat you up if I wanted to,” in reply to § 87(2)(b) saying that the officers were violating his rights. In his telephone statement to the CCRB, § 87(2)(b) provided this quote as, “I can beat you up like you did to the other guy.” He made the same allegation in his statement to IAB. § 87(2)(b) stated that this comment was made by Police Officer Spina as he was escorted from the building. § 87(2)(b) stated that as the officers escorted § 87(2)(b) out he heard Police Officer Spina say, “I’m going to fuck you up,” to § 87(2)(b) further stated that § 87(2)(b) was highly irate and physically combative with officers and stated that the force used to subdue him appeared reasonable relative to his behavior. No other witnesses interviewed for this case alleged hearing an officer threaten § 87(2)(b) with force.

Police Officer Spina denied making the above comment and Police Officers Harrington and Martin denied hearing any officer threaten § 87(2)(b) with force. Police Officer Spina confirmed that he assisted Police Officer Martin in escorting § 87(2)(b) from the building.

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Police Officer Spina, threatened, in some manner, to use physical force against § 87(2)(b) [REDACTED]

Patrol Guide Procedure 221-01 holds that officers are allowed to use reasonable physical force when necessary to place a person in custody (Board Review 06).

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation B – Force: Police Officer Christian Spina tightly handcuffed § 87(2)(b) [REDACTED]
[REDACTED]

[REDACTED] alleged that Police Officer Spina tightened his handcuffs in response to § 87(2)(b) [REDACTED] stating that the handcuffs were too tight. § 87(2)(b) [REDACTED] stated that he was calm and compliant throughout the incident. All civilians interviewed stated that § 87(2)(b) [REDACTED] was acting in erratic manner and was moving his body unpredictably and yelling as officers attempted to remove him from the premises. None of the civilian witnesses interviewed observed an officer tighten § 87(2)(b) [REDACTED]'s handcuffs.

Police Officer Spina confirmed that he escorted § 87(2)(b) [REDACTED] out of the building with Police Officer Martin but denied tightening § 87(2)(b) [REDACTED]'s handcuffs. Police Officer Martin stated that he placed § 87(2)(b) [REDACTED] in handcuffs and that he did not double-lock the handcuffs. Police Officer Martin clarified that § 87(2)(b) [REDACTED]'s erratic movements may have caused the handcuffs to tighten around his wrists. Police Officers Spina, Martin, and Harrington all confirmed that § 87(2)(b) [REDACTED] was physically compliant before seeing § 87(2)(b) [REDACTED] at which point his behavior became violent.

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation C – Force: Police Officer Christian Spina used physical force against § 87(2)(b)

Allegation D – Force: Police Officer Christopher Harrington used physical force against

§ 87(2)(b)

Allegation E – Force: Police Officer Kevin Martin used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was brought to the ground in a forceful manner in order to facilitate his detainment by police. It is also undisputed that at some point prior to arriving at the stationhouse, he sustained injury to his forehead (Privileged Document 01-03), § 87(2)(g)

§ 87(2)(b) alleged that an officer tripped him to the ground after he exited the building where he was arrested, resulting in an abrasion to his right arm and head and resulting in significant blood loss. § 87(2)(b) stated that he fell to the ground after an officer tripped him by extending his leg in front of § 87(2)(b) as he was led out of the building in a calm and compliant manner. § 87(2)(b) stated that while in transport to the 46th Precinct stationhouse, his head made contact with the vehicle partition. § 87(2)(b) stated that this did not worsen his injury that he had sustained when he fell.

In his telephone statement to the CCRB, § 87(2)(b) alleged that an officer he could not see punched him in the arm while he was on the ground. However, in both his IAB interview and his CCRB interview, § 87(2)(b) stated that he was not struck by an officer at any point.

§ 87(2)(b) stated that § 87(2)(b) was physically resistant as officers attempted to lead him outside and that he appeared to fall to the ground incidentally, with multiple officers falling on top of him. § 87(2)(b) confirmed that § 87(2)(b) was resistant as he was led outside but stated that he was not present when § 87(2)(b) fell to the ground. § 87(2)(b) stated that he observed blood on § 87(2)(b)'s head after he was lifted to his feet but he could not account for any action that would have caused this injury. § 87(2)(b) stated that § 87(2)(b) “was acting like a maniac” and appeared to drop himself to the ground as officers were escorting him outside. § 87(2)(b) stated that § 87(2)(b)'s injuries were self-inflicted and referred the investigator to a video he had filmed in regards to the extent of § 87(2)(b)'s injuries. § 87(2)(b) stated that he observed § 87(2)(b) fall to the ground but could not account for a specific cause. § 87(2)(b) did not see § 87(2)(b)'s head hit the ground. § 87(2)(b) initially stated that he was removed from the location for medical treatment before § 87(2)(b) was placed in a vehicle for transport but later stated that he saw § 87(2)(b) sitting in a police vehicle striking his own head against the metal partition.

Police Officers Harrington and Spina stated that a decision was made to place § 87(2)(b) on the ground in a controlled manner but that § 87(2)(b) fell to the ground harder than intended due to his erratic movements. Police Officer Harrington stated that he sustained an injury to his knee when § 87(2)(b) fell into him as he was brought to the ground. Police Officer Martin stated that § 87(2)(b) fell to the ground incidentally as a result of his erratic movements. All three officers confirmed that § 87(2)(b) was highly resistant and

Video of the incident, provided by § 87(2)(b) shows § 87(2)(b) on the ground and acting in erratic manner. § 87(2)(b) is lying face down and moving his legs in an unpredictable manner while calling out in a loud voice. § 87(2)(b) is lifted by the officers and there is no apparent injury to his face and there is no blood visible on him or on the pavement where his face had been resting Board Review 04).

It is undisputed that officers detaining § 87(2)(b) made the decision to bring him to the ground outside of the building. § 87(2)(b), § 87(2)(g)

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|---------------|-----------------|-------|------|
| Investigator: | Signature | Print | Date |
| Squad Leader: | Title/Signature | Print | Date |
| Reviewer: | Title/Signature | Print | Date |